

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S FINAL APPROVED TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

July 13, 2006

9:30 a.m.

Reported By:

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Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:30 a.m. on July 13,
 3 2006, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:
 6 Ms. Marcia Busching, Phoenix, Chairperson
 7 Mr. Gary Scaramazzo, Page, Teleconference
 8 Ms. Ermila Jolley, Yuma, Teleconference
 9 Mr. Carl Kunasek, Maricopa
 10 Ms. Royann J. Parker, Pima, Teleconference
 11 OTHERS PRESENT:
 12 Mr. Todd Lang, Executive Director
 13 Ms. Paula Ortiz, Executive Assistant
 14 Ms. Colleen McGee, Fiscal Service Manager
 15 Mr. Michael Becker, Voter Education Manager
 16 Mr. Daniel Ruiz II, Campaign Finance Manager
 17 Mr. Eric Peterson, Administrative Counsel
 18 Ms. Christina Murphy, Administrative Assistant
 19 III
 20 Ms. Diana Varela, Assistant Attorney General
 21 Mr. Eric Ehst, Clean Elections Institute
 22 Ms. Laurell Lowe, Perkins Coie Brown & Bain
 23 Ms. Nancy Read, Secretary of State's Office
 24 Mr. David Maddox, Attorney for Len Munsil
 25 Mr. Janvan Amerongen, Citizen
 Mr. Brian Wendel, Off Madison Avenue
 Ms. Barbara Klein, League of Women Voters, AZ
 Ms. Sahana Jayaraman, Citizen
 Mr. John Greene, Citizen
 Mr. Mike Harris, Citizen
 Mr. Don Dybus, Cummings & McCloney
 Mr. Tom Husband, Citizen

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P R O C E E D I N G

1 CHAIRPERSON BUSCHING: Good morning, everyone.
 2
 3 This is the meeting of the Citizens Clean Elections
 4 Commission at 1616 West Adams, Suite 110, Phoenix,
 5 Arizona. Today is Thursday, July 13th, 2006. It's 9:30
 6 a.m. I am Marcia Busching, Chairman of the Citizens
 7 Clean Elections Commission.
 8
 9 I want to announce that the Commission may vote
 10 to go into executive session, which will not be open to
 11 the public for any item listed on the agenda in order to
 12 obtain legal advice. All matters on the agenda may be
 13 discussed, considered and are subject to action by the
 14 Commission.
 15
 16 The first item on the agenda is the call to
 17 order, which I've already done.
 18
 19 The second item is the approval of the May
 20 25th, 2006 Commission meeting minutes. And I note for
 21 the record that Commissioner Kunasek and I are present
 22 in person and the other Commissioners are all present by
 23 telephone. So we have everyone in attendance.
 24
 25 As to the minutes, are -- are there any
 additions or corrections? If not, the Chair will
 entertain a motion.
 COMMISSIONER KUNASEK: I will move for the

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1 approval of the May 25th Commission meeting minutes.
 2 COMMISSIONER PARKER: Second.
 3 CHAIRPERSON BUSCHING: It's been moved by
 4 Commissioner Kunasek and seconded by -- Commissioner
 5 Parker was that?
 6 COMMISSIONER PARKER: Sure.
 7 CHAIRPERSON BUSCHING: Yes -- that the minutes
 8 of May 25th, 2006 be approved as prepared. All in favor
 9 say, "aye."
 10 (Chorus of ayes.)
 11 CHAIRPERSON BUSCHING: Opposed, nay? Chair
 12 votes aye. Motion carries.
 13
 14 Next item on the agenda is Item IV,
 15 consideration and decision whether there is reason to
 16 believe a violation occurred in MUR 06-0002, complaint
 17 against Len Munsil. And because we have such an
 18 extensive number of people here, I will limit initial
 19 comments to 10 minutes a person, and if there's rebuttal
 20 after the fact, it will be five minutes. We will start
 21 out with Mr. Lang giving an introduction to the
 22 Commission. I will then allow anyone from the public
 23 that wishes to speak pursuant to those rules to speak.
 24 We will have rebuttal, then we will close outside
 25 comment and the Commissioners will discuss the matter
 and call for a vote. So --

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1 MS. VARELA: I'm sorry, did you mean to skip
 2 Item III? Are you moving that?
 3 CHAIRPERSON BUSCHING: I'm sorry. No, I did
 4 not mean to skip it. Thank you.
 5
 6 Before we go to Item IV, let's go to Item III,
 7 Executive Director's report. Mr. Lang?
 8 MR. LANG: Thank you, Madame Chair and
 9 Commissioners. Good morning. You have before you my
 10 Executive Director report. I'm not going to reread it.
 11 I'll just point out the highlights. I enjoyed a trip to
 12 Santa Fe two weeks ago to testify in regard to the
 13 Arizona experience for Clean Elections for a study
 14 committee, a Governor's Study Committee there. And it's
 15 quite interesting and lots of challenging questions and
 16 good ideas. So that was worthwhile.
 17
 18 You see things are going fine on the accounting
 19 and audit issues, along with the state candidate
 20 statement pamphlets, those are at the printer now.
 21 Participation. The interesting thing there is
 22 because of the petition challenges, a couple races are
 23 uncontested and so we have had a few candidates pull out
 24 of participating status because they're uncontested.
 25 But, as you can see, we have over 65 percent
 participation which would be our highest participation
 rate yet if that's how it ends up. Our candidate

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1 statement pamphlet, you see a 186 candidates of the
2 approximately 214 candidates sent in statements and
3 those are in production as I said.

4 The debates are going well. Staff has been
5 attending. They started on Tuesday and had a couple
6 last night as well on Wednesday and staff will be
7 attending all of them. And the reports back are they
8 were interesting, fun, and the attendance is improving.
9 I will be attending some next week as well. We will --
10 we all have our assignments, Mike is working hard to
11 make sure we all attend the debates.

12 Unless you have questions, that concludes my
13 report.

14 COMMISSIONER PARKER: How does somebody
15 un-participate?

16 MR. LANG: Madame Chair, Commissioner Parker,
17 our rules permit participating candidates to withdraw
18 from participating status as long as they comply with
19 the various requirements and a couple of candidates have
20 done so.

21 COMMISSIONER PARKER: Okay.

22 COMMISSIONER JOLLEY: Commissioner Busching?

23 CHAIRPERSON BUSCHING: Commissioner Jolley.

24 COMMISSIONER JOLLEY: Yes, I have a question
25 for Todd. This is more under the Information segment

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1 that you sent out. It says, "List of all candidate
2 committees for 2006." And this is for the primary
3 election. And I'm going to use the example of page 12
4 of 12 and page 11 of 12. And in there we have District
5 28 which is Bill Philips, he's a Republican, and then we
6 also have District 26, Lena Saradnik, a Democrat.

7 I noticed that the funds have been disbursed.
8 And since they are in basically an uncontested primary,
9 because of party affiliation, will they be able to carry
10 over part of the disbursed funds to the general election
11 or do they have to use those funds as they apply for the
12 general election funds?

13 MR. LANG: Madame Chair, Commissioner Jolley,
14 the answer is, no, they cannot carry those over. They
15 have to spend primary funds in the primary. That's
16 required by statute.

17 COMMISSIONER JOLLEY: Okay. So, they don't
18 have that choice then? They can't say: Well, I really
19 don't need the funds as much as I will need them in the
20 general election?

21 MR. LANG: The one provision that allows to
22 address part of that concern is the one-party dominant
23 districts of course. You can get more money in the
24 primary. But other than that, no. If you have an
25 uncontested primary, you still have to spend your

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1 primary money during that time.

2 COMMISSIONER JOLLEY: Okay. Thank you.

3 CHAIRPERSON BUSCHING: Or turn it back in.

4 MR. LANG: Or even better, turn it back in.

5 COMMISSIONER JOLLEY: Okay. Thank you.

6 COMMISSIONER PARKER: And Todd -- this is
7 Commissioner Parker -- have we heard anything from
8 Miller Allen regarding -- I mean, not Miller Allen, but
9 Fester and Chapman regarding the audit?

10 MR. LANG: Yeah. Actually, I meant to mention
11 that.

12 Madame Chair, in the Napolitano enforcement
13 matter they are finishing up their preliminary draft and
14 that will be on the agenda for the next Commission
15 meeting. Which is currently scheduled for two weeks
16 from today for your approval of the preliminary draft
17 and then there will be a final draft after that.

18 CHAIRPERSON BUSCHING: Have they been assigned
19 any other audits at this point or is that the only one?

20 MR. LANG: Madame Chair, as far as I know,
21 that's the only one.

22 CHAIRPERSON BUSCHING: And I saw heads nodding
23 that, yes, in fact, that's the only one.

24 Any other questions for Mr. Lang?

25 Okay. Now we'll go to Agenda Item IV,

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1 consideration and decision whether there is reason to
2 believe a violation occurred in MUR 06-0002, complaint
3 against Len Munsil. Mr. Lang?

4 MR. LANG: Thank you, Madame Chair,
5 Commissioners. This is a complaint filed by Jeffrey Fox
6 on June 21 against the Len Munsil Campaign in regards to
7 an ad that came -- that appeared in a gun catalog sent
8 out to potential customers by a company known as J&G
9 Sales II, Inc.

10 You have in your packet -- this is Agenda Item
11 IV. You have in your packet the initial complaint along
12 with the exhibits, and this includes the original letter
13 written by J&G to the Secretary of State's office. You
14 also have the June 28th Len Munsil Campaign response
15 which was written by a law firm, I think Mueller &
16 Drury, and that's dated June 28th. After that you have
17 your July 11th notarized statement by Munsil affirming
18 that response, so we have a sworn notarization affirming
19 that response. And we have the July 12th notarization
20 by the owner of J&G which is right after the Len Munsil.
21 And that's signed and notarized by Mr. Brent DeSaye who
22 owns the company.

23 And then finally you have after that the letter
24 written by Mike Harris who is a candidate for governor
25 in regard to his concerns in this matter and I think he

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1 will be here today to speak to the Commission. So you
2 should have all those documents.

3 The matter before you is actually rather
4 straightforward. The question is whether or not the Len
5 Munsil Campaign received an illegal contribution from
6 the J&G Sales Company in the form of this advertisement
7 that appeared in this catalog. As you know,
8 corporations are prohibited from donating to
9 participating candidates and, in fact, that's the
10 allegation in the case here.

11 The key question for the Commission to decide
12 is whether or not there was coordination between J&G and
13 the Munsil Campaign. Because if there was coordination,
14 that becomes a contribution and loses its status as an
15 independent expenditure. Independent expenditures
16 trigger separate provisions and concerns that aren't
17 here before you here today. But eventually, what that
18 means is, if, in fact, it an independent expenditure it
19 may trigger matching funds for the other participating
20 candidates. In this case, that will be the Goldwater
21 Campaign once they qualify for public funding. But
22 before you today is simply the question of whether or
23 not this was a coordinated communication.

24 Based on the -- I've reviewed -- of course,
25 reviewed everything with care and talked with interested

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1 parties on both sides. And based on my review of the
2 documents before you and the facts, primarily that we
3 have sworn statements from the Munsil Campaign and from
4 the catalog owner indicating that there was no
5 coordination, I'm satisfied that there was not a
6 violation in that sense and the Commission should find
7 no reason to believe.

8 I say that because to lie -- intentionally lie
9 on a notarized statement triggers criminal charges, and
10 that gives me the assurance and comfort that the folks
11 who did these notarized statements understand what's at
12 stake and understand they face much more serious charges
13 than matching funds if they prevaricated.

14 So, because of that, and because in the past
15 the Commission has on occasion in lieu of, you know --
16 of course, we have the power to do an investigation,
17 that's, of course, if the Commission pleases, I will be
18 happy to do that. But in the past we have in lieu of
19 depositions and subpoenas, we have taken sworn
20 statements. So I am satisfied in this case that there
21 was no coordination between the campaigns, so that's why
22 I recommended the Commission find no reason to believe.

23 CHAIRPERSON BUSCHING: Okay. Any questions of
24 Mr. Lang?

25 If not, then I'll open it up to the public. Is

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1 there any member of the public that wishes to speak to
2 this matter? Sir, if you will come forward. You can
3 take the chair there.

4 MR. HARRIS: Thank you.

5 CHAIRPERSON BUSCHING: State your name and be
6 advised that you have 10 minutes.

7 MR. HARRIS: Good morning. My name is Mike
8 Harris. I'm a Republican candidate for governor. Thank
9 you, Commissioners and Mr. Director, for allowing me the
10 opportunity to address these very, very serious charges
11 here.

12 I just listened to Director Lang's statement
13 and I have several issues with it. If I've not seen a
14 coordinated piece of literature, this is it. There's no
15 mistaking this. This is a political ad placed in a gun
16 catalog, which is a sales catalog. It -- clearly it is
17 a solicitation for volunteers, it's a solicitation for
18 money, it's a solicitation for political support. It
19 very clearly says this.

20 If you go back to Mr. DeSaye's comments in his
21 response to the Secretary of State -- which, by the way,
22 is notarized, but that is not a sworn statement taken
23 under oath. And I would like to see these people put
24 under oath and be questioned appropriately concerning
25 this issue as to the issue of coordination.

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1 The matching fund issue is really a side issue.
2 What is of greater importance in this matter is that Mr.
3 Munsil knowingly violated campaign finance laws by
4 coordinating it. If you read this piece, Mr. Munsil and
5 Mr. DeSaye sat down together to discuss this election
6 and topics of importance to the state of Arizona. Now,
7 that -- that itself on face value tells me of
8 coordination. But aside from the matching funds issue,
9 there's an issue of 45,000 solicitations for funding
10 going out on behalf of the Munsil Campaign.

11 In addition to which, this occurrence -- this
12 event occurred during the seed money stage of Mr.
13 Munsil's Campaign. He was not yet a qualified candidate
14 for Clean Elections and was in the seed money stage.
15 And if we do our calculations correctly, this ad has a
16 value of over \$20 -- \$25,000, which clearly puts him
17 over the spending limits that he was allowed to do, and
18 he needs to amend his finance reports for that period
19 because this is an in-kind contribution and it's
20 inaccurate.

21 In addition to which, as Mr. Lang stated, this
22 is a corporate contribution and corporate contributions
23 to any campaign are poison. They're not allowed. It's
24 not what is there. And for that and the other reasons,
25 I -- I really would like to see a real in-depth

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1 investigation done.

2 The Secretary of State's office kind of brushed
3 this thing by; in my opinion, shirked her duty with this
4 one. Because there was one letter from the Secretary of
5 State's office and one response from Mr. DeSaye. No one
6 was ever put under oath and no one was ever asked to
7 produce documents on it. And if you're going to call
8 that an investigation, it's pretty lame.

9 The other issues that I had is, has anyone
10 spoken to the printer? The printer may be able to
11 substantiate where the source of the artwork that
12 appeared in this ad was. Because this art has Mr.
13 Munsil's photograph on it and it's digitally identical
14 to his campaign logo and the other materials that he
15 distributed.

16 You know, they deny that there's any
17 coordination, but the denials which are made that are
18 not under oath are meaningless. I want these people
19 under oath. I want them to have to look at a perjury
20 charge if they decide to lie again. This is a serious
21 matter. And this really is about the integrity of the
22 electorate.

23 There's a very, very important thing that this
24 ruling either way could do. If Mr. Munsil is found to
25 have violated the law, he may be -- you have a course of

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1 action to remove him from the ballot. This needs to be
2 done speedily and quickly because time is of the
3 essence. Because if Mr. Munsil would win the primary
4 and has to be removed after the primary occurs, then
5 there is -- there's no procedure in the state's statutes
6 which allows for the replacement of Mr. Munsil for
7 un-voluntary removal. So if he dies, there a procedure.
8 If he voluntarily removes himself, there's a procedure.
9 But for an un-voluntary removal, there is no procedure
10 defined by statute.

11 So I'd like to get this thing looked at and
12 investigated very thoroughly and very rapidly, because
13 time is of the essence; September 12th is the primary,
14 we have less than 60 days. I would like to be sure if
15 Mr. Munsil is the winner of this, that he doesn't have
16 to look at removal after the primary or removal from
17 office downstream.

18 I want this to be a clean and honest election
19 and this type of stuff is just indicative of what has
20 been going on with the Munsil Campaign, because we've
21 been having some -- some real troubles within our
22 campaign of burglaries and other things, but I don't
23 want to digress on that.

24 What I'm asking for is to, please, order an
25 investigation because this needs to be a clean election.

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1 I'm really asking this Commission to honor their
2 mandates and honor their mission statement and please do
3 the job you've been commissioned by the citizens of
4 Arizona to do. You know, be thorough and do the work,
5 please. That's all we're asking here. Just take a look
6 into this and make sure these findings are not
7 whitewashed over and there is a thorough investigation.

8 If you look at this and you read it, it's an
9 ad, I'm sorry. And it defies, you know, credence, if
10 you will. That the Munsil Campaign does not have any
11 idea that this was going out -- I have my own campaign.
12 I know what goes out. I'm responsible for what goes
13 out. If anyone wants my artwork and wants my picture,
14 and is going to write something like this for me, I want
15 to know what they're going to say and how they're going
16 to say it. If you're going to make blunders in the
17 election, this is the biggest blunder you could make.

18 They're hiding behind what's called the
19 editorial excuse. This is an ad that appears in a sales
20 catalog. This is not a newspaper. It's not a magazine.
21 It's a sales catalog. The purpose is to sell guns, to
22 sell gun equipment. If you want to buy an infield
23 mounting scope for \$19.95, it's on the same page. This
24 is no different than Sharper Image.

25 But that's really it. That's my point. I want

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1 to be sure that we have a level playing field here. Mr.
2 Munsil is running as a Clean Election candidate. I am
3 running as a traditional candidate. I have to raise
4 money the hard way. I'd like to make sure if he is
5 taking the state's money, he is doing so legally with no
6 unfair or undue advantage. Thank you very much.

7 CHAIRPERSON BUSCHING: Thank you, sir. Do any
8 of the Commissioners have any questions for Mr. Harris?
9 No? Thank you.

10 COMMISSIONER KUNASEK: Excuse me. Yes. What's
11 the basis for your statement that there was
12 coordination?

13 MR. HARRIS: Well, look at the photo-identical
14 art. Look at the picture on here. Look at the
15 statement that they make here. "Welcome to the
16 political season. I was thankful for the recent
17 opportunity to sit down with a candidate for governor,
18 Len Munsil, to find out where he stands on some
19 important topics.

20 "We discussed several gun-related issues that
21 are critical to Arizona shooters and hunters. I was so
22 happy to learn that Len definitely supports any
23 law-abiding, U.S. citizen in owning firearms and
24 carrying them how and where they choose."

25 The fact that he sat down and discussed issues

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1 is electionary. And then this comes out. You're going
2 to tell me this is unsolicited? This defies credibility
3 if you believe this is unsolicited. Just because he
4 liked the -- if it was, he damaged the Munsil Campaign
5 severely.

6 But this really needs to be looked at. I mean,
7 let's find out, because there has been no investigation.
8 The Secretary of State sends one letter, they responded
9 with one letter; let's have a thorough, complete
10 investigation of this. Put the people under oath. Ask
11 Mr. Munsil, ask his campaign staff, ask Mr. DeSaye under
12 oath: What did you do; how did you meet; who went
13 there; what did you talk about; who from your campaign
14 provided the artwork; what did the printer have to say?
15 Let's talk to the printer, find out where he got the
16 artwork from.

17 Who crafted this piece actually? This piece is
18 very well written. It seems like it's written well
19 enough to be by a political consultant of some kind who
20 has an agenda here he wants to advance within the
21 gun-owning population of the state. And it's just --
22 I'm sorry. I hope I answered your question.

23 COMMISSIONER KUNASEK: Well, you did. But
24 having been in a number of campaigns myself and having
25 been interviewed by all kinds of interest groups, those

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1 interviews take place and the interest group then
2 develops a statement of support or opposition to your
3 candidacy.

4 With regard to the artwork. That could have
5 been plagiarized from any one of a number of sources,
6 campaign literature they picked up off of a table
7 someplace, letterhead. And so I think that's kind of a
8 loose attempt to create a connection. I -- I don't
9 quite agree with the way you're presenting your position
10 on those two points.

11 MR. HARRIS: Well, two issues. Number one, J&G
12 II Sales, Inc. is not an interest group, they're a
13 corporation. They're a registered Arizona corporation.
14 They've been in business for a number of years. They're
15 not an interest group. Let's be clear about that. This
16 is corporate.

17 Number two, if it was plagiarized, let's find
18 out. Let's look into it. Let's find out. You know, if
19 there are people are out there plagiarizing, there
20 should be penalties for that too. But let's find out
21 what the truth is here.

22 COMMISSIONER KUNASEK: Well -- fine. Thank
23 you.

24 MR. HARRIS: Okay.

25 CHAIRPERSON BUSCHING: Any other questions for

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1 Mr. Harris?

2 Thank you.

3 MR. HARRIS: Thank you.

4 CHAIRPERSON BUSCHING: Anyone else from the
5 public wishes to speak? Sir.

6 MR. GREENE: Good morning, Commissioners. My
7 name is John Greene. I'd like to thank you for your
8 service before I forget. I know this is not an easy
9 job.

10 I've been a lawyer for 34 years, I've been in
11 public service, and I've worked on lots of campaigns,
12 and I studied Title 16.

13 I have tremendous respect for Mr. Lang, but I
14 disagree with his assessment of what the letters in the
15 file really mean. They are not statements under oath.
16 They're signatures that people attested that they signed
17 a document. I really think that an investigation needs
18 to be done. Commissioner Kunasek's questions were
19 really good. But I would say that we're not looking at
20 complete certainty here.

21 Mr. Lang's report said that it's been --
22 there's no proof that there's been coordination. We
23 think that there is more than sufficient probable cause
24 that there has been a coordination of efforts, whether
25 purposefully or by mistake because it just doesn't make

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1 any sense.

2 The Arizona Revised Statutes makes it very easy
3 to prove that something is not an independent
4 expenditure. And I think that the reason that the
5 legislature did that over the years is because it's very
6 difficult to prove a secret agreement. But if you look
7 at the section that Mr. Lang didn't quote, the (A)
8 through (D) in 901.14, it gives you rules that if they
9 are true, will dictate or deem as a matter of law
10 coordination. And (D) in that line of, let's call them
11 evidentiary rules even though they're technically not --
12 I know you're a lawyer, Ms. -- Madame Chairman. If you
13 show that, you're deemed to have coordinated.

14 I'm just trying to apply common sense. I was
15 shocked when I saw this campaign piece as a citizen.
16 And in the interest of full disclosure, I am helping Mr.
17 Harris in his campaign. I'm a former candidate myself,
18 and as a matter of fact, one of the qualifying
19 candidates that withdrew.

20 I -- I am very much concerned that this
21 corporation, which made the biggest possible mistake a
22 person in this state can make in the campaign world, and
23 that is have a corporation pay money, because they're
24 looking at a class six felony and probably going to be
25 guilty of that because it's not an editorial. I can't

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1 believe that they made that mistake on their own. I
2 think that they are a pawn in this thing. I think
3 someone -- I'm not saying Mr. Munsil did this
4 personally, but I think someone in his campaign made a
5 huge mistake.

6 And I think because of the stakes involved, the
7 fact that a class six felony is involved, the fact that
8 one of the penalties here is disqualification from the
9 ballot, that we can't accept a couple of letters, which
10 I've read and the language is very nicely parsed, by the
11 way. They don't -- they don't really explain
12 coordination in terms of what the law requires as
13 coordination.

14 If we accept these letters, I think we're doing
15 a disservice. I think there's a smoking gun here. I
16 think the fact that the writer of this piece incredibly
17 admitted in the piece that he sat down with the
18 candidate and discussed the issues, the various issues
19 that showed up in this campaign piece. That's 95
20 percent of what you need under 901.14(D) to show
21 coordination. The only other thing that was missing was
22 done with a view towards having this piece done.

23 So we're not here saying that coordination
24 actually, absolutely happened. We're here saying this
25 is such a serious matter and there is so much

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1 undeniable, undisputed evidence already that hasn't even
2 been gathered as a result of an investigation, pointing
3 to coordination, that it is incumbent upon this
4 Commission, which has proven in the past to take the
5 tough decision and to do things that create a lot of
6 controversy, I think the Commission should do an
7 investigation, put people under oath. I would love to
8 talk to the people at J&G Gun Sales and ask them what --
9 what possessed them to make this obvious illegal
10 expenditure.

11 And I think we'll find out a lot. At any rate,
12 thank you. I hope I've made some sense at all. All
13 we're asking for is an investigation. I don't think
14 that we can rely -- and I would ask you to look at the
15 letters Mr. Lang cited. I don't think we can rely on
16 those as explaining what I see as a smoking gun.

17 CHAIRPERSON BUSCHING: Thank you.

18 MR. GREENE: I'll be happy to answer any
19 questions.

20 CHAIRPERSON BUSCHING: Do any of the
21 Commissioners have any questions of Mr. Greene? If not,
22 thank you, sir.

23 MR. GREENE: Thank you very much.

24 CHAIRPERSON BUSCHING: Anyone else from the
25 public wish to speak? Sir.

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1 MR. MADDOX: My name is David Maddox. Mr. Lang
2 and I spoke yesterday. I'm an attorney for the Len
3 Munsil Campaign. I just wanted to make a couple points
4 in light of what has been said today.

5 First, the campaign's position is obviously
6 different in two respects. The first being we don't
7 believe that this ad, or editorial, or commentary, or
8 whatever you choose to call it, is, in fact, an
9 expenditure under 16-901.8(A). We believe clearly that
10 commentaries are editorials in any kind of periodical
11 publications. It's like what was just explained by the
12 Commissioner. I mean, you sit down with these people,
13 they want to write something, they can write something.
14 As long as there's no coordination or intent, there's
15 nothing wrong with it.

16 In this instance, it's not an expenditure
17 specifically by the statute. We believe the first
18 amendment and the statute itself says that what occurred
19 here was not an expenditure and it was not in any way an
20 illegal activity.

21 I will say also that Mr. Lang talked to me as a
22 representative of the campaign and I'm confident that
23 somebody talked to Mr. DeSaye, and it was very clear
24 when what was filed by Mr. Munsil, was filed and it was
25 under oath and he was subject to penalties of perjury.

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1 I'm sure that was made clear to Mr. DeSaye also. And
2 you will note in the letter that he filed as well, it
3 doesn't just say subscribed but sworn or affirmed
4 before. I think he clearly understood that the
5 statements he made were subject to the penalties of
6 perjury if they were not true.

7 On the issue of coordination, if you actually
8 get to that point, responding just to some of the things
9 that had been said, Mr. DeSaye explains where the
10 heading came from. He says in his letter that he did
11 this without Munsil's knowledge or cooperation by going
12 to the Website and simply copying it. So we know where
13 it came from, we know what he did. His comments are
14 very straightforward, there was no coordination. He
15 didn't ask permission to write it. The graphics weren't
16 given. There's no input. There was no decision to
17 input on the content. Mr. DeSaye did it all himself.

18 And, accordingly, what the campaign looks at is
19 not much more than I picked up the Arizona Republic
20 today and there were some things on the editorial page
21 that I didn't like and that's because of my particular
22 political persuasion, but they have the absolute right
23 to do that.

24 The legislature when it passed this statute, it
25 is our position they fairly set some exceptions. And

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1 the issue here that's really important is the First
2 Amendment issue that any candidate, not Mr. Munsil, take
3 Mr. Munsil and set him aside, any candidate have the
4 right to be protected as people express their own
5 opinions. And they express them in regular publications
6 of some nature. This is not a newspaper, but it doesn't
7 have to be. It says "other periodic publications" under
8 the statute.

9 And in this instance, the Munsil Campaign feels
10 strongly that everyone should have those protections.
11 They're clearly First Amendment protections and also
12 protections under the statute.

13 So there was no coordination and we don't
14 believe there was any violation and that the complaint
15 should be dismissed so the Commission can get on to much
16 more serious matters which I know you are going to have.
17 And I'm perfectly willing to answer any questions anyone
18 might have.

19 By the way, hello, Mr. Lang. I've never met
20 you.

21 MR. LANG: Good to meet you.

22 CHAIRPERSON BUSCHING: Any questions by members
23 of the Commission? If not --

24 MR. MADDOX: If not, thank you. And I thank
25 you for your service. I know this is difficult.

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1 does not fit the newspaper exception. And with that I
2 disagree with Mr. Maddox on that one point. I do think
3 this is an expressed advocacy. But, ultimately, as you
4 see, I conclude there is no coordination.

5 But Mr. Greene did get to the heart of the
6 matter. If there is coordination, I think he's right
7 that 16-901.14(D) is where you're going to find the hit.
8 And what that says is, it's not an independent
9 expenditure if: "The expenditure is based on
10 information about the candidate's plans, projects, or
11 needs, or those of his campaign committee provided to
12 the expending person by the candidate, or candidate
13 agent, or office member, or employee by the campaign
14 with a view towards having the expenditure made."

15 What that means is -- what I should say is,
16 what that doesn't mean is, if a candidate meets with an
17 interest group, whether it's Planned Parenthood or
18 Arizona Citizens for Life or -- or a gun catalog dealer,
19 what that doesn't mean is, if they talk about the
20 issues, that that's coordination or planning. What it
21 means is, if Len Munsil's Campaign came to this gun
22 catalog and said, hey, I -- I want to protect the Second
23 Amendment, I agree with you on the issues, I need you to
24 run an ad, I need you to reach out to the gun owners for
25 us, then that would be coordination.

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1 CHAIRPERSON BUSCHING: Thank you, sir.
2 MR. MADDOX: You're going to do a lot of this
3 over the next couple months.

4 COMMISSIONER KUNASEK: Oh, God.
5 MR. LANG: I definitely agree with that.

6 CHAIRPERSON BUSCHING: Is there anyone else
7 from the public that wishes to speak to this matter?

8 MR. HARRIS: Can I clarify a couple things?

9 CHAIRPERSON BUSCHING: If there's no one else
10 that wishes to speak, yes, Mr. Harris, I'll let you.

11 Well, Mr. Lang, do you want to talk first and
12 then let Mr. Harris rebut?

13 MR. LANG: No, that's fine.

14 MR. HARRIS: Go ahead. Let him go first. He
15 might give me something good.

16 CHAIRPERSON BUSCHING: You might rebut him.

17 MR. LANG: Madame Chair, thank you,
18 Commissioners. I just wanted to agree with Mr. Harris
19 in part and disagree with Mr. Maddox in part. But you
20 will see my point. I agree with Mr. Harris on two
21 points. One is this is clearly expressed advocacy. I
22 think it is clearly an advertisement, so I agree with
23 him there. I also agree with him at least
24 preliminarily, and we'll have to ask our counsel down
25 the road for legal advice, but my initial take is this

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1 But in this case -- but in this case, we don't
2 have that sort of information. And, more importantly,
3 what we do have are these sworn notarized statements
4 from both saying that no such coordination took place.

5 And we have researched the issue. Those sworn
6 statements are subject to perjury charges, they are
7 subject to criminal sanctions. So I don't share their
8 concern that they're lying in these -- in these letters.
9 So, I'm comfortable with that.

10 So with that, I just want to clarify those
11 points for you.

12 CHAIRPERSON BUSCHING: Okay. Mr. Harris, five
13 minutes.

14 MR. HARRIS: Yes. Thank you. Mr. Lang made a
15 very succinct case for why we should have an
16 investigation. His statements are accurate. Let's --
17 let's get to the bottom of this. Let's put these people
18 under oath and ask them the difficult questions that are
19 addressed by Mr. Fox in his complaint to the Clean
20 Elections Commission. Those questions have not been
21 answered.

22 These are very terse, very guarded statements
23 both by Mr. DeSaye and by Mr. Munsil's Campaign, and I
24 would like to see these people put under oath and
25 deposed because we need to know the truth on this. We

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1 really do. This is important. It's important to the
2 citizens that are the electorate of Arizona. We deserve
3 the highest standards of integrity in this election.
4 Thank you very much.

5 CHAIRPERSON BUSCHING: Thank you. Any last
6 questions for Mr. Harris? If not, we'll turn to the
7 Commissioners and any questions they have or any
8 discussions they want to do before I entertain a motion.

9 COMMISSIONER PARKER: I have a question. This
10 is Royann Parker. I don't have my ARS book up here with
11 me. What is the definition of an independent
12 expenditure?

13 CHAIRPERSON BUSCHING: Mr. Lang?

14 MR. LANG: Madame Chair, Commissioners,
15 independent expenditure is defined at the section Mr.
16 Greene eluded to, 16-901 part 14. And what it says is:
17 Independent expenditure means an expenditure by a person
18 or committee other than a campaign committee that
19 expressly advocates the election or defeat of a clearly
20 identified campaign or candidates that is made without
21 coordination or consultation with any candidate, or
22 committee, or agent of the candidate, that is not made
23 in concert or at the request or suggestion of a
24 candidate or any committee or agent of the candidate.

25 COMMISSIONER PARKER: Okay.

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1 MR. LANG: It goes on -- but that's the
2 relevant part of the definition. There's a number of
3 exclusions and Mr. Greene and I discussed the most
4 relevant exclusion in this case.

5 COMMISSIONER PARKER: So then would that mean
6 that any other business that decided to interview them
7 and make a similar thing, would be also an independent
8 expenditure in your view?

9 MR. LANG: In many cases. There are
10 exceptions, and the one that's talked about today is the
11 newspaper exception. And there are a number of other
12 exceptions. One of the key exceptions not relevant
13 today, but that is related, is that companies can send
14 messages to their shareholders and their employees and
15 that sort of thing, and that's accepted. Groups --
16 membership groups can send letters to their members, and
17 that's accepted. So, there's a number of exceptions
18 that don't trigger independent expenditure provisions.
19 But in my view, those don't apply here today.

20 The other point I'd make is that, if it's an
21 independent expenditure or not is a secondary question
22 we don't need to decide today. The issue today is
23 whether there was coordination.

24 CHAIRPERSON BUSCHING: And Mr. Lang, other than
25 the 16-901.14, is there any place that the Commissioners

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1 can focus on to determine coordination? Or is
2 coordination just determined by the negative of whether
3 it's an independent expenditure?

4 MR. LANG: Madame Chair, as far as I know,
5 that's where you would look. It's defined in the
6 negative.

7 CHAIRPERSON BUSCHING: Okay. Ms. Varela, are
8 you in agreement?

9 MS. VARELA: Yes. As far as I know, that's
10 where the Commission would look.

11 CHAIRPERSON BUSCHING: So, it's really -- so
12 under those circumstances, it's an either/or. It's
13 either an independent expenditure or coordinated
14 expenditure and the Commission has to decide which of
15 those two it is?

16 MR. LANG: Assuming it's expressed advocacy and
17 political speech, then, yes. Or it could be an
18 independent expenditure that's not coordinated but still
19 be an exception; for instance, the newspaper and all the
20 other issues we discussed. But, if it's expressed
21 advocacy and it's coordinated, then it's not an
22 independent expenditure, it's a donation.

23 COMMISSIONER PARKER: Mr. Lang, do we know if
24 in this company in their catalog they send out on a
25 regular basis, do they often have editorial comments or

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1 have we seen previous issues to see if, you know, does
2 he have an ongoing dialogue with his customers?

3 COMMISSIONER KUNASEK: And if I could, if I
4 could -- this is Karl. Royann, could I piggyback on
5 your question?

6 Obviously, candidates have been interviewed by
7 the National Rifle Association. Have they ever carried
8 a similar ad or editorial, whatever we want to
9 characterize it for candidates other than Mr. Munsil,
10 for example, federal candidates?

11 Although that would not trigger State of
12 Arizona Clean Elections Commission, but I think it would
13 indicate if this was a one time only or if has been done
14 in other elections.

15 MR. LANG: Madame Chair and Commissioners, we
16 did -- I did not -- the staff did not look into that
17 issue. We decided this issue on the documents we had
18 and on the merits of the arguments raised by Mr. Harris
19 and others, and we didn't look at that issue. We
20 certainly can though.

21 COMMISSIONER PARKER: Madame Chair, this is
22 Commissioner Jolley.

23 CHAIRPERSON BUSCHING: Go forward -- go ahead.

24 COMMISSIONER JOLLEY: I have a question for
25 Todd.

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1 Todd, J&G Sales has solicited subscribers.
2 Doesn't that put them in a certain type of category
3 because it's not a mass mailing?

4 MR. LANG: Madame Chair, Commissioner Jolley,
5 the definition of the newspaper exception includes
6 subscribers. And if we decided to proceed and determine
7 that this was something we need to do, that's something
8 we can look at. I believe though that based on the
9 cases I've read, that subscribers generally mean folks
10 who actually subscribe and not folks who are on a
11 mailing list because they bought something from the
12 company or what have you. But that's something to be
13 seen down the road.

14 I know that the federal government -- we often
15 look to the federal regulations for guidance and I know
16 their newspaper exceptions are rather narrow. For
17 precisely the concerned corporations could print
18 something and call it a newspaper when really they want
19 to expressly advocate for someone and get around any
20 regulation. So generally the federal exception for
21 newspapers is limited.

22 COMMISSIONER JOLLEY: Okay. Thank you.

23 CHAIRPERSON BUSCHING: If there's nothing else,
24 the Chair will entertain a motion or have discussion.

25 COMMISSIONER KUNASEK: Well, Madame Chair, I --

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1 as I mentioned when I was asking Mr. Harris a question,
2 my experience in running campaigns, and none of my
3 campaigns -- they all pre-date Clean Elections, and I
4 guess so I ran dirty campaigns is the only assumption
5 you can make. But you are interviewed without any
6 understanding, you're asked questions without any feel
7 for what those questions, the way you answer them might
8 be used against you, for you. You usually have a good
9 idea but there's no commitment made. I fail to see the
10 coordination issue supported here. And for that, I do
11 not agree that there was a coordination.

12 With regard to the independent expenditure, now
13 I am not -- I'm not that familiar with that part of the
14 law, but I definitely think there's no coordination.

15 CHAIRPERSON BUSCHING: And, luckily, we don't
16 have to deal with the independent expenditure issue
17 today.

18 I agree with you, Commissioner Kunasek. I --
19 initially when I read all these materials, I initially
20 was inclined not to agree with the Executive Director,
21 but after I received the sworn letter from J&G Sales
22 yesterday afternoon and saw in there that, in fact, J&G
23 Sales, Mr. Brent DeSaye did swear and affirm that he
24 solely developed this editorial independent of the
25 corporation or the political committee and that he

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1 basically plagiarized the logo from the Website, I was
2 convinced that the sworn statements were there, and
3 accurate, and I would believe them.

4 And unless there was other evidence that came
5 to the forefront by someone, I think that we can't go
6 looking for a problem if none exists. And we don't have
7 any evidence that it exists based upon sworn statements.
8 And, so, I'm in agreement with the Executive Director's
9 recommendation.

10 Any other comments by members of the
11 Commission? If not --

12 COMMISSIONER SCARAMAZZO: Madame Chair, I would
13 -- this is Commissioner Scaramazzo. I would move to
14 find no reason to believe in this case.

15 CHAIRPERSON BUSCHING: Is there a second?

16 COMMISSIONER PARKER: I'll second.

17 CHAIRPERSON BUSCHING: It's been moved by
18 Commissioner Scaramazzo and seconded by Commissioner
19 Parker that we uphold the recommendation of the
20 Executive Director and find no reason to believe in the
21 matter of Len Munsil MUR 06-0002.

22 Any further discussion? If not, the Chair will
23 call for the question, all in favor say, "aye."

24 (Chorus of ayes.)

25 CHAIRPERSON BUSCHING: Opposed, nay? Chair

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1 votes aye. Motion carries unanimously.

2 The next item on the agenda is Item -- thank
3 you all for coming and speaking.

4 MR. MADDOX: Thank you.

5 CHAIRPERSON BUSCHING: We appreciate your
6 input.

7 Next item on the agenda is Item V,
8 consideration and decision whether there is reason to
9 believe a violation occurred in MUR 06-0003, complaint
10 against Cheryl Chase. Mr. Lang.

11 MR. LANG: Thank you, Madame Chair,
12 Commissioners. You have before you the reasons -- the
13 statement of reasons by the Executive Director.
14 Attached to that is the original complaint filed by
15 Pinal County Democrats, Mr. Joseph Robinson, the Chair,
16 filed that, and the original campaign finance report
17 that was filed on the January 31st finance report that
18 shows violations on the third page regarding our
19 communications account. You then have Ms. Chase's
20 response letter basically saying she corrected the
21 problem and some follow-up letters.

22 And then you have on the side -- unfortunately,
23 those of you on the phone, which is the majority of the
24 Commission, don't have this. It's the revised January
25 31st report. It's not necessary for your consideration,

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1 it's just there to show that, in fact, yes, she
 2 corrected her campaign finance report.
 3 What this case is about is actually a violation
 4 did occur. Ms. Chase accepted contributions from PACs
 5 and also accepted contributions over the limit for her
 6 constituent communication account. We're talking about
 7 five -- five or so contributions. She explained when we
 8 brought it to her attention several months ago, she
 9 explained that this occurred simply because of an error,
 10 she just put them in the wrong account. Be that as it
 11 may, we asked her to correct the problem and refund the
 12 money and she did do that.

13 Unfortunately, the Website on the Secretary of
 14 State's Website, while it features the original report
 15 which is the January 30 -- 31st report and the June 30th
 16 report, it doesn't put up -- their software doesn't
 17 enable them to put up the revised reports. And they've
 18 assured me they're working on that for the next election
 19 cycle.

20 So this complaint was filed, I think, primarily
 21 because the person who filed the complaint wasn't aware
 22 that the problem had been remedied. So there you have
 23 it. It's a rather straightforward issue. She accepted
 24 PAC money and too much money from a couple of donors.
 25 She corrected the problem, she returned the funds, and

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1 that's shown in the revised report.

2 And so for that reason, although there was
 3 technically a violation, I recommend that the Commission
 4 find no reason to believe.

5 CHAIRPERSON BUSCHING: Commissioner Kunasek?

6 COMMISSIONER KUNASEK: Was the revised report
 7 filed before the complaint was filed?

8 MR. LANG: Madame Chair, Commissioner Kunasek,
 9 that is my understanding.

10 COMMISSIONER KUNASEK: So had then -- had then
 11 the complainant reviewed the revised report, we assume
 12 they would not have filed the complaint?

13 MR. LANG: They may still have because she did
 14 technically violate the law. But she says -- according
 15 to her signed, sworn statement, she says she revised it
 16 on April 7th.

17 COMMISSIONER KUNASEK: When was the complaint
 18 filed?

19 MR. LANG: The complaint was filed much more
 20 recently. June 9th. June 9th. So I think if that
 21 gentleman just looked at the proper report, which I
 22 don't blame him, he went to the Website, and I think
 23 it's reasonable to believe the report will be accurate.

24 COMMISSIONER KUNASEK: Thank you.

25 CHAIRPERSON BUSCHING: And in order to find the

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1 accurate report, you have to go to the Secretary of
 2 State's office?

3 MR. LANG: Madame Chair, that's my
 4 understanding. We have -- Clean Elections, the
 5 Commission has access to the new reports through the
 6 software, but the public is required to go to the
 7 Secretary of State's office. If I'm incorrect, I'd love
 8 to be corrected, but that's my understanding.

9 COMMISSIONER KUNASEK: This is a very good
 10 point that I was not aware of. You would think that the
 11 revised report would be available on the Website as well
 12 as the original report.

13 MR. LANG: They're working on that.

14 CHAIRPERSON BUSCHING: And I find it very
 15 unfortunate, because the Secretary of State has had the
 16 time to revise her entire Website in many, many
 17 respects, and yet this particular one --

18 COMMISSIONER KUNASEK: This one.

19 CHAIRPERSON BUSCHING: -- has been falling
 20 through the cracks since even before our last election
 21 when she promised it before this election. So, I can
 22 remember discussion last August where she, in fact, went
 23 through her people and wrote and said we'll have it done
 24 before the next election and it's not done.

25 MR. LANG: Joe and Kevin have given me their

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1 word. I'm confident.

2 CHAIRPERSON BUSCHING: Okay. Any other
 3 questions of Mr. Lang?

4 If not, the Chair will entertain a
 5 motion.

6 COMMISSIONER JOLLEY: Commission -- Chairperson
 7 Busching, this is Commissioner Jolley.

8 CHAIRPERSON BUSCHING: Go ahead.

9 COMMISSIONER JOLLEY: In the matter of MUR No.
 10 06-0003, I will move that we accept the Executive
 11 Director's recommendation that the Commission dismiss
 12 the matter under review for Cheryl Chase, State
 13 Representative District 8.

14 COMMISSIONER KUNASEK: I will second that.

15 CHAIRPERSON BUSCHING: It's been moved by
 16 Commissioner Jolley and seconded by Commissioner Kunasek
 17 that we accept the Executive Director's recommendation
 18 and dismiss the complaint in MUR 06-0003, Cheryl Chase.

19 All in favor say, "aye."

20 (Chorus of ayes.)

21 CHAIRPERSON BUSCHING: All opposed, nay? Chair
 22 votes aye. Motion carries.

23 Commissioner Kunasek -- Commissioner
 24 Scaramazzo, are you there?

25 COMMISSIONER SCARAMAZZO: I'm still here. I

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1 voted "aye."
 2 CHAIRPERSON BUSCHING: Okay. Thank you.
 3 The next item on the agenda is Item VII,
 4 consideration and possible -- oh, no. Item VI,
 5 discussion and possible action on proposed payment
 6 agreement MUR 04-0043, Peggy Toomey Hammann. Mr. Lang?
 7 MR. LANG: Madame Chair, the Assistant AG,
 8 Diana Varela, will be presenting this matter.
 9 MS. VARELA: Madame Chair and Commissioners,
 10 this agreement we have brought to the Commission for its
 11 consideration. My understanding from staff was that Ms.
 12 Hammann has requested that there be a payment agreement.
 13 She is unable to satisfy the entire amount of the final
 14 order and it is at her request that the Commission enter
 15 into a payment agreement with her. So we are bringing
 16 it to your -- to your attention for your consideration
 17 and action.
 18 COMMISSIONER SCARAMAZZO: Madame Chair?
 19 CHAIRPERSON BUSCHING: Commissioner Scaramazzo.
 20 COMMISSIONER SCARAMAZZO: Yes. I just -- I'd
 21 like to know a little bit more about the discussions
 22 that took place. We had a payment agreement established
 23 at one time during this case, and Ms. Toomey failed to
 24 -- or Ms. Hammann failed to meet the obligations of that
 25 payment schedule.

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1 COMMISSIONER KUNASEK: Ms. Varela, the recourse
 2 -- one of the recourses would be a civil lawsuit to
 3 recover?
 4 MS. VARELA: Right. And we've -- in the
 5 Attorney General's office we have a bankruptcy and
 6 collection section that works with us. They actually
 7 are the ones who would do it. But, yeah, there's some
 8 sort of civil action that we could take.
 9 COMMISSIONER KUNASEK: Is there anything in
 10 either the Clean Elections statute or any other statute
 11 that would say: If you fail -- if you don't enter the
 12 agreement, of course, we're back to square one -- but
 13 then if you fail to pay up, you're not eligible to run
 14 for office again?
 15 Kind of similar to the -- the impeachment
 16 statute, which says that if you are impeached, you're
 17 not eligible to run for office again.
 18 MS. VARELA: Right.
 19 COMMISSIONER KUNASEK: Is there anything like
 20 that?
 21 We're trying to clean up and enforce Clean
 22 Elections, perhaps some real teeth would say, if you
 23 don't come clean and pay up, you can't run again.
 24 MS. VARELA: Right. There is -- no.
 25 COMMISSIONER KUNASEK: Might take a

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1 What guarantees do we have in place that she
 2 will follow through this time?
 3 MS. VARELA: Commissioner -- Madame Chair,
 4 Commissioner Scaramazzo, I actually did not have those
 5 communications with her. My understanding is that she
 6 was unable to pay the entire amount of the final order
 7 which is about \$2,800, and it was at her request that we
 8 did this.
 9 I -- I am aware of the situation that you're
 10 talking about before. And my recollection actually is
 11 that that agreement wasn't even in place because she
 12 failed to sign that agreement.
 13 In this agreement, there's a provision that she
 14 needs to -- if she's serious about this, and if the
 15 Commission is inclined to enter into it, she needs to
 16 sign it, execute it, and get it back to the Commission
 17 no later than July 31st of this -- at the end of this
 18 month; otherwise, we just go back to the final order.
 19 With respect to whether or not she's going to
 20 follow through, I can't speak to that. But I -- but I
 21 think that this agreement would cover that and we can
 22 still take action against her pursuant to this
 23 agreement. Assuming she signs it and gets it back to us
 24 on time and it's executed properly, this agreement gives
 25 us recourse in the event she misses one of the payments.

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1 constitutional amendment.
 2 MS. VARELA: There's definitely not anything in
 3 Clean Elections Act itself.
 4 COMMISSIONER KUNASEK: That says that?
 5 MS. VARELA: That says that.
 6 COMMISSIONER KUNASEK: Thank you.
 7 MS. VARELA: Uh-huh.
 8 COMMISSIONER JOLLEY: Chairperson Busching?
 9 CHAIRPERSON BUSCHING: Commissioner Jolley.
 10 COMMISSIONER JOLLEY: Yes, I have a question
 11 for Assistant Attorney General Diana Varela. I believe
 12 that the first settlement was that she -- that Ms. Peggy
 13 Hammann was to pay within three months the payment in
 14 full. And I noticed on this agreement regarding
 15 payment, it has now been stretched over a 12-month
 16 period; is that correct?
 17 MS. VARELA: That is correct with respect to
 18 this agreement, that it's over 12 months. With respect
 19 to the first agreement, I don't remember exactly but I
 20 do agree with you that it was shorter than -- than 12
 21 months. I'm not remembering the specific date. We
 22 never actually had that agreement, she didn't sign it.
 23 COMMISSIONER JOLLEY: Okay.
 24 MS. VARELA: No, what Commissioner Scaramazzo
 25 was talking about is we had tried to enter into a

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1 settlement agreement and the Commission at that time was
2 willing to do that, but she never executed the
3 agreement.

4 COMMISSIONER JOLLEY: Okay.

5 MS. VARELA: But that was the -- that was the
6 terms of the agreement to my recollection.

7 COMMISSIONER JOLLEY: Okay. Thank you.

8 CHAIRPERSON BUSCHING: Mr. Lang?

9 MR. LANG: Thank you, Madame Chair,
10 Commissioners. I just wanted to point out that staff
11 came up with these terms based on the conversations with
12 her and based on her representations as to her financial
13 situation. She has been difficult to work with on many
14 occasions, but we have no reason to doubt her on this
15 particular issue, that is her ability to pay. So this
16 seemed like a proper way to go.

17 I can assure all the Commissioners though that
18 if for any reason this agreement is either not signed by
19 her or not fulfilled by her, we won't be back for
20 another settlement. So this is it.

21 MS. VARELA: And just so it's absolutely clear,
22 if she doesn't sign it, the Commission goes back to the
23 final order. If it gets signed and executed and she
24 misses a payment, then we proceed under the terms of the
25 settlement agreement.

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1 CHAIRPERSON BUSCHING: Okay. Commissioner
2 Kunasek?

3 COMMISSIONER KUNASEK: Are you ready for a
4 motion?

5 CHAIRPERSON BUSCHING: I am.

6 COMMISSIONER PARKER: I have one last question.

7 CHAIRPERSON BUSCHING: Commissioner Parker?

8 COMMISSIONER PARKER: I notice her address is
9 at a Democratic Party Headquarters. Does she not have a
10 residence we would send this to?

11 MS. VARELA: Madame Chair, Commissioner Parker,
12 that is the address that she has asked us to send any
13 sort of documents to. That's one of the difficulties
14 that staff has had with her going back many, many
15 months. And when we had the hearing in -- at the Office
16 of Administrative Hearings, we specifically asked her on
17 record which address she wanted us to use and that was
18 it.

19 So, until she tells us otherwise, that's the
20 address that she has provided to us. And as far as
21 where she's living, I don't know.

22 COMMISSIONER PARKER: Okay.

23 CHAIRPERSON BUSCHING: Commissioner Kunasek?

24 COMMISSIONER KUNASEK: Madame Chair, I would
25 move Item No. VI to accept the proposed payment

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1 agreement in the Peggy Toomey Hammann situation.

2 CHAIRPERSON BUSCHING: Is there a second?

3 COMMISSIONER PARKER: I'll second.

4 CHAIRPERSON BUSCHING: It's been moved by
5 Commissioner Kunasek and seconded by Commissioner Parker
6 that we accept the proposed agreement regarding payment
7 in the Peggy Toomey Hammann matter, MUR 04-0043.

8 All in favor say, "aye."

9 (Chorus of ayes.)

10 COMMISSIONER SCARAMAZZO: Aye barely.

11 CHAIRPERSON BUSCHING: Opposed, nay? Chair
12 votes aye. Motion carries.

13 I understand your frustration, Mr.
14 Scaramazzo.

15 Then we will move to Item VII, consideration
16 and possible action of Ben Miranda's request for
17 exemption from participation in primary election debate
18 for State Representative District 16. Mr. Lang?

19 MR. LANG: Thank you, Madame Chair,
20 Commissioners. Sad to note that Representative
21 Miranda's brother died on July 4th. He wrote us and
22 faxed us a letter on July 10th asking to be excused from
23 the debate on July 11th because the funeral was
24 scheduled for just -- during the debate actually, 5:00
25 to 7:00 p.m.

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1 We told him that we did not expect him to be at
2 the debate, but the Commission ultimately had to approve
3 it. Our rules are at 107. And, normally, our rules
4 require that a written request occur at least a week
5 prior to the debate. But given the circumstances and
6 the late timing of the -- of the actual funeral, I would
7 recommend to the Commission that we accept his letter
8 and excuse -- that the Commission excuse him from the
9 debate which has already occurred.

10 COMMISSIONER KUNASEK: So moved. If you're
11 ready for a motion.

12 CHAIRPERSON BUSCHING: Uh-huh. Is there a
13 second?

14 COMMISSIONER SCARAMAZZO: Second.

15 CHAIRPERSON BUSCHING: It's been moved by
16 Commissioner Kunasek and seconded by Commissioner
17 Scaramazzo that the Commission exempt Candidate Miranda
18 from participating in a debate for the primary election.

19 All in favor say, "aye."

20 (Chorus of ayes.)

21 CHAIRPERSON BUSCHING: Opposed, nay? Chair
22 votes aye. Motion carries.

23 We'll move to Item VIII, legal report by
24 Assistant Attorney General Diana Varela. Update on the
25 following matters: One, Rick Murphy, MUR 04-0079; two,

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1 David Burnell Smith, MUR 04-0023.
 2 MS. VARELA: Madame Chair, Commissioners, thank
 3 you. On the Rick Murphy matter, as you will recall, the
 4 Commission issued an order -- I believe at one of its
 5 meetings in May -- finding probable cause to believe
 6 that there was a violation by Mr. Murphy. He has
 7 requested a hearing and that has been scheduled. And to
 8 my understanding, he has not requested an informal
 9 settlement conference so we will be proceeding with the
 10 hearing. It is scheduled for Wednesday, August 23rd at
 11 1:30. That's kind of all there is to report on that one
 12 unless anyone has any questions.

13 COMMISSIONER PARKER: Where do the hearings
 14 take place?

15 MS. VARELA: They're at the Office of
 16 Administrative Hearing. It's right on the corner --
 17 right across from our office, 15th Avenue and
 18 Washington.

19 COMMISSIONER PARKER: Thank you.

20 MS. VARELA: Uh-huh. And with respect to the
 21 second matter, David Burnell Smith. Mr. Smith filed a
 22 Motion to Set Aside the Court's Order of December 7th,
 23 2005, and I have a copy of the pleading if anyone wants
 24 a hard copy of that. I, obviously, will be responding
 25 to that.

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1 decision does not effect the Arizona Clean Elections
 2 statutes?

3 MS. VARELA: Well, it didn't -- I mean, it will
 4 remain to be seen if people bring challenges to the
 5 Clean Elections system based on this, just based on this
 6 recent decision. But the facts of the case are, I
 7 think, different.

8 COMMISSIONER KUNASEK: Okay.

9 CHAIRPERSON BUSCHING: And, Ms. Varela, with
 10 respect to Mr. Smith's filing, are there timelines for
 11 responding and having this matter heard? And what do
 12 you perceive as --

13 MS. VARELA: Well, his -- he -- there's only
 14 one reference to a rule in his pleading. He references
 15 Rule 60 of the Arizona Rules of Civil Procedure. Rule
 16 60(C) provides the grounds for a motion to set aside a
 17 judgment and there are a number of different reasons
 18 that someone could bring a Rule 60 motion. There are
 19 six, in fact.

20 If you bring it under Rule 60(C)(1), (2), and
 21 (3), you should have done it within six months. The
 22 other ones are a reasonable amount of time. It's
 23 unclear -- he didn't specify which one he is bringing it
 24 under, so, you know, we'll make the appropriate
 25 argument. I don't think it falls under (1), (2) or (3).

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1 The gist of his argument is that a recent
 2 decision by the U.S. Supreme Court provides a basis for
 3 setting aside the Superior Court's order that was issued
 4 in December of 2005. Obviously, we don't agree with
 5 that and will be filing our papers shortly. The case
 6 that he is relying on is a case called Randall versus
 7 Sorrell that was issued June 26th, just a few weeks ago.

8 And it is a case -- it is a case dealing with
 9 the campaign finance -- or campaign finance statutes in
 10 Vermont. The court struck down both the expenditure
 11 limits -- and this is a very, very simplified summary --
 12 but struck down both the expenditure limits and the
 13 contribution limits that were set forth in Vermont's
 14 statutes.

15 A significant difference between the facts of
 16 that case and what the Commission is concerned with is
 17 that it did not -- the Court was not looking at a public
 18 financing scheme for candidates. It was looking at just
 19 general campaign finance statutes. And I -- also I only
 20 brought one copy because it's fairly lengthy, but if the
 21 two commissioners who are here would like a copy, I can
 22 ask staff to make a copy.

23 And that concludes my report unless anyone has
 24 any questions.

25 COMMISSIONER KUNASEK: So, the Supreme Court

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1 It's like excusable neglect, mistake -- I'm not
 2 remembering off the top of my head. But just reading
 3 the terms of the rule, they seem completely not at all
 4 appropriate to the pleading that he's brought. But
 5 we'll make the appropriate arguments, you know, based on
 6 that rule. But the rest of the reasons, it just says a
 7 reasonable time.

8 CHAIRPERSON BUSCHING: And he's filed this back
 9 in the Superior Court as opposed to the Arizona Supreme
 10 Court?

11 MS. VARELA: That's right.

12 CHAIRPERSON BUSCHING: Okay. All right. Well,
 13 this continues to be interesting.

14 MS. VARELA: Yes.

15 CHAIRPERSON BUSCHING: Appreciate the update on
 16 that.

17 MS. VARELA: You're welcome. Thank you.

18 CHAIRPERSON BUSCHING: Any other questions of
 19 Ms. Varela?

20 If not, we'll go to Item IX, discussion and
 21 consideration of personnel matter, re-open and complete
 22 performance assessment and six-month review of the
 23 Executive Director to discuss salary and Executive
 24 Director's staff personnel issues. The Commission may
 25 vote to discuss this matter in executive session

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1 pursuant to ARS 38-431.03(A)(1).
 2 Note: No deliberations or voting will take
 3 place in executive session. Any legal action will take
 4 place in open session. Minutes of and discussions made
 5 in an executive session are confidential pursuant to ARS
 6 Section 38-431.03(B) and shall not be released to anyone
 7 unless specifically authorized by law.
 8 With that, I'll entertain a motion to go into
 9 executive session.
 10 COMMISSIONER PARKER: So moved.
 11 CHAIRPERSON BUSCHING: Is there a second?
 12 COMMISSIONER KUNASEK: Second.
 13 CHAIRPERSON BUSCHING: It's been moved by
 14 Commissioner Parker and seconded by Commissioner Kunasek
 15 that we go into executive session.
 16 All in favor say, "aye."
 17 (Chorus of ayes.)
 18 CHAIRPERSON BUSCHING: Opposed, nay? Chair
 19 votes aye. Motion carries.
 20
 21 (Whereupon the public retires from the meeting
 22 room.)
 23
 24 (Whereupon the Commission is in executive
 25 session from 10:38 a.m. until 11:07 a.m.)

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1 as Chairman of the Commission, I've been very pleased
 2 with Mr. Lang's performance over the course of the last
 3 nine months. He, when he was interviewed, he indicated
 4 he was in a position to hit the ground running. He has,
 5 in fact, hit the ground running.
 6 He appears to have put together a very
 7 competent and solid staff to meet the challenges that we
 8 will have in this upcoming election. People seem to be
 9 getting along well and the press has not been too
 10 negative yet. So, we're -- we're on a roll right now.
 11 We, obviously, hope that we can continue on the roll.
 12 And in evaluating him, we did ask him to
 13 provide us with a number of comparative positions and
 14 the compensation for those positions. And in light of
 15 both his evaluation and those comparisons, I agree with
 16 Commissioner Kunasek's motion.
 17 And, so, if there's no other discussion, I will
 18 call for the question; but certainly if there is, I'll
 19 hear discussion.
 20 Hearing no discussion, I'll call for the
 21 question, all in favor of a 10 percent increase to Mr.
 22 Lang commencing as of July 1st, 2006, say, "aye."
 23 (Chorus of ayes.)
 24 CHAIRPERSON BUSCHING: Opposed, nay? The Chair
 25 votes aye.

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1
 2 (Whereupon all members of the public are
 3 present and the Commission without the presence of
 4 Commissioner Scaramazzo resumes in general session.)
 5
 6 CHAIRPERSON BUSCHING: We're now in regular
 7 session. We have just come out of executive session and
 8 we're in a position to deliberate and have a motion with
 9 respect to the Executive Director's compensation
 10 commencing July 1st. Is there any discussion or motion?
 11 COMMISSIONER KUNASEK: Madame Chair, with
 12 regard to the last item, the Executive Director's salary
 13 for the coming year -- and I assume this comes on a
 14 fiscal year basis?
 15 CHAIRPERSON BUSCHING: July 1.
 16 COMMISSIONER KUNASEK: July 1?
 17 CHAIRPERSON BUSCHING: Yes.
 18 COMMISSIONER KUNASEK: -- that the Executive
 19 Director's salary be increased by 10 percent.
 20 COMMISSIONER PARKER: I'll second that.
 21 CHAIRPERSON BUSCHING: It's been moved by
 22 Commissioner Kunasek and seconded by Commissioner Parker
 23 that the Executive Director's compensation be increased
 24 by 10 percent commencing July 1st, 2006.
 25 Before we vote on it, I would like to say that

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1 And I note for the record that Commissioner
 2 Scaramazzo adjourned during the executive session so we
 3 do not have him participating in this agenda item.
 4 The Chair votes aye. The motion carries.
 5 MR. LANG: Thank you, Commissioners.
 6 CHAIRPERSON BUSCHING: Move to Item X on the
 7 agenda, call for public comment. This is the time for
 8 consideration and discussion of comments and complaints
 9 from the public. Action taken as a result of public
 10 comment will be limited to directing staff to study the
 11 matter, or rescheduling the matter for further
 12 consideration and decision at a later date, or
 13 responding to criticism.
 14 COMMISSIONER KUNASEK: Madame Chair, can I put
 15 on my public hat now?
 16 CHAIRPERSON BUSCHING: Absolutely.
 17 Commissioner Kunasek?
 18 COMMISSIONER KUNASEK: I would in light of the
 19 Cheryl Chase case where the report was corrected but not
 20 available on the Website, perhaps a letter to the
 21 Secretary of State's office asking for a date as to when
 22 they anticipate this will be available. Because here we
 23 have a case where a complaint was filed, legitimately
 24 filed, based on information they were able to -- to
 25 obtain from the Website.

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1 I don't know where the complainant lived, I
 2 think he was probably, as I recall, outside of the
 3 metropolitan area. And for those people in outlying
 4 parts of the state, many times the Website is their sole
 5 source of information. To make a citizen of Yuma, or
 6 Kingman, or wherever drive to Phoenix to review records
 7 in the Secretary of State's office on a matter like this
 8 where time is really important, I think is unnecessary
 9 when it could be available on the Website if they make
 10 the appropriate adjustments.

11 CHAIRPERSON BUSCHING: Thank you.

12 COMMISSIONER KUNASEK: Thank you.

13 CHAIRPERSON BUSCHING: Any other matters --
 14 members of the public wish to comment?

15 And I will piggyback my own public comment and
 16 say that I think that there's a number of open meeting
 17 or open disclosure issues that are done in other states
 18 to make elections more seamless and transparent. And I
 19 have suggested to staff in the past that those be
 20 addressed, if not by the Secretary of State, by our own
 21 Commission's Website. So that people -- if the
 22 Secretary of State isn't doing it, then perhaps we do it
 23 instead. And I've been assured that staff is going to
 24 look into that and hopefully that will be a very top
 25 priority after the election is concluded this year.

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1 Any other members of the public wish to
 2 speak?

3 MS. KLEIN: Just a quick thing.

4 CHAIRPERSON BUSCHING: Could you --

5 MS. KLEIN: My name is Barbara Klein and I'm
 6 with the League of Women Voters in Arizona. And I just
 7 wanted to address what you had just said because the
 8 League did send a letter to the Secretary of State's
 9 office about two months ago requesting this update as
 10 well. We were informally told it would be done
 11 momentarily, but -- I just wanted to tell you that.

12 COMMISSIONER KUNASEK: Thank you.

13 CHAIRPERSON BUSCHING: Thank you. Any other
 14 members of the public wish to speak?

15 If not, Item XI, adjournment. Is there a
 16 motion?

17 COMMISSIONER KUNASEK: So moved.

18 COMMISSIONER JOLLEY: I'll second.

19 CHAIRPERSON BUSCHING: It's been moved by
 20 Commissioner Kunasek and seconded by Commissioner Jolley
 21 that we adjourn.

22 All in favor say, "aye."

23 (Chorus of ayes.)

24 CHAIRPERSON BUSCHING: Opposed, nay? Chair
 25 votes aye. Motion carries. Thank you.

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1
 2 (Whereupon the proceeding concludes at 11:14
 3 a.m.)

4
 5 * * * * *

C E R T I F I C A T E

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 8
 9 I, Angela Furniss Miller, Certified Reporter,
 10 do hereby certify that the foregoing pages numbered 1
 11 through 59, inclusive, constitute a full and accurate
 12 printed record of my stenographic notes taken at said
 13 time and place, all done to the best of my skill and
 14 ability.

15 DATED, at Phoenix, this 27th day of July,
 16 2006.

17
 18
 19
 20 Angela Furniss Miller, RPR
 21 Certified Reporter (AZ50127)